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4 IN THE UNITED STATES DISTRICT COURT

5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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7 CRAIG OGANS,

8 Plaintiff,

9 v.

10 UNITED PARCEL SERVICE, INC.,

11 Defendant.

Case No. [17-cv-02443-MMC](#)

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13 ORDER DENYING AS MOOT
14 DEFENDANTS' MOTION TO DISMISS;
15 VACATING HEARING

16 Re: Dkt. Nos. 13, 15

17 Before the Court is defendant's "Motion to Dismiss Plaintiff's Complaint," filed May
18 5, 2017. On May 19, 2017, plaintiff filed a "First Amended Class and Collective Action
19 Complaint" ("FAC").

20 A party may amend a pleading "once as a matter of course within . . . 21 days after
21 service of a responsive pleading or 21 days after service of a motion under Rule 12(b),
22 (e), or (f), whichever is earlier." See Fed. R. Civ. P. 15(a). "[A]n amended pleading
23 supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De
24 Bretteville, 239 F.2d 824, 833 (9th Cir. 1956), cert. denied, 353 U.S. 947 (1957).

25 In the instant case, plaintiff filed his FAC within 21 days after service of
26 defendant's motion to dismiss, and, consequently, was entitled to amend. See Fed. R.
27 Civ. P. 15(a).

28 Accordingly, the Court hereby DENIES as moot defendant's motion, and
VACATES the June 16, 2017 hearing scheduled thereon.

IT IS SO ORDERED.

Dated: May 23, 2017


MAXINE M. CHESNEY
United States District Judge